ATTORNEY FOR APPELLANT:

JASON W. BENNETT
Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ANTWAN JUMAR LOVE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0712-CR-1068
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0612-FB-63

AUGUST 4, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Antwan Jumar Love appeals the sentence imposed after he pled guilty to the Class B felony of conspiracy to commit robbery.[1] We reverse and remand.

ISSUE

The following issue is dispositive: Whether the trial court's imposition of three years in Community Corrections "as a condition of probation" violates Love's plea agreement.[2]

FACTS AND PROCEDURAL HISTORY

On December 13, 2006, Love and other individuals robbed an Igloo Frozen Custard store in Lafayette, Indiana. Love served as a scout before the robbery and as a lookout while the other individuals robbed the store. During the robbery, one individual (not Love) shot a gun into the air.

The State charged Love with thirteen Class B felonies (five for robbery, a conspiracy to commit robbery, and seven for confinement with a deadly weapon), and seven Class D felonies (six for theft and one related conspiracy charge). Love pled guilty to the Class B felony conspiracy to commit robbery charge. The plea agreement, which was accepted by the trial court, stipulated that all other charges would be dismissed. The agreement further stipulated that "the Court may impose whatever sentence it deems appropriate except the executed portion of the sentence, in any, shall not exceed ten years. Both sides may argue sentencing." (Appellant's App. at 65). In addition, the agreement stipulated that "as a condition for any suspended sentence or probation, the defendant shall testify if called upon to do so." *Id*. The trial court

[1] A Class B felony may carry a sentence between six and twenty years. Ind. Code § 35-50-2-5.
[2] In the alternative, Love argues that the sentence is inappropriate under Ind. App. Rule 7(B). Because we reverse and remand, we need not discuss this issue.

sentenced Love to ten years executed, three years in Community Corrections "as a condition of probation," and one year on unsupervised probation. Love now appeals.

DISCUSSION AND DECISION

Love contends that the sentence imposed by the trial court is improper. Specifically, he argues that the sentence violates his plea agreement by imposing punitive requirements (three years in Community Corrections) not authorized by the agreement.

Recently, in *Tubbs v. State*, No. 79A05-0802-CR-70 (Ind. Ct. App. June 19, 2008), we addressed the same issue raised in the instant case. In *Tubbs*, the only difference between the plea agreement provisions in the instant case was that the *Tubbs* plea limited the executed sentence to nine years. We first discussed our supreme court's holding in *Frieje v. State*, 709 N.E.2d 323 (Ind. 1999), in which the court noted the well-established law that if a court accepts a plea agreement worked out by the parties it is bound by the agreement's terms. *Tubbs* at 3 (citing *Frieje*, 709 N.E.2d at 324). We further discussed the *Frieje* court's holding that "unless the plea agreement affords the court discretion in fixing the terms of probation, the court may not impose upon a defendant conditions that 'materially add to the punitive obligation.'" *Id*. (citing *Frieje*, *id.* at 325-26). We noted that *Chism v. State*, 807 N.E.2d 798 (Ind. Ct. App. 2004), *Shaffer v. State*, 755 N.E.2d 1193 (Ind. Ct. App. 2001) (Vaidik, J. concurring in result with separate opinion), and *Antcliff v. State*, 688 N.E.2d 166 (Ind. Ct. App. 1997) did not support the sentence imposed upon *Tubbs*. *Id.* at 4-5.

We held that the specific paragraph addressing the only imposed condition for probation or a suspended sentence was "at odds with any implied broad grant of discretion concerning the terms of probation in [the more general paragraph's] assertion that the court might impose whatever sentences it deemed appropriate." *Tubbs* at 6. We further held that Tubbs' plea

agreement did not afford the trial court broad discretion in fixing the terms of probation. *Id*. Therefore, we held that the imposition of a term in Community Corrections after the expiration of the nine-year executed sentence constituted "an additional substantial obligation of a punitive nature not authorized by the plea agreement." *Id.* The same is true in the instant case, and the three-year Community Corrections' term added to Love's sentence is improper.

We reverse the sentence and remand to the trial court for imposition of a sentence in accord with the terms of the plea agreement.[3]

Reversed and remanded.

MATHIAS, J., and BAILEY, J., concur.

[3] The State argues that Love waived this issue by not raising it below. As we held in *Parrett v. State*, 800 N.E.2d 620, 622 (Ind. Ct. App. 2003), "a judge cannot impose a sentence that does not conform to the mandate of the relevant statutes." A sentence that exceeds statutory authority is illegal, constitutes fundamental error, and is subject to correction at any time. *Id.* (citing *Lane v. State*, 727 N.E.2d 454, 456 (Ind. Ct. App. 2000)). A defendant's challenge to an illegal sentence is not waived simply because that illegal sentence was imposed pursuant to a plea agreement. *Id*. at 623.